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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,493	03/12/2004	Lindsay Roth	GAO-0001	6601
23413 7590 08/10/2010 CANTOR COLBURN, LLP 20 Church Street 22nd Floor Hartford, CT 06103			EXAMINER BOUCHELLE, LAURA A	
			ART UNIT 3763	PAPER NUMBER
			NOTIFICATION DATE 08/10/2010	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**AUG 06 2010**

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Hartford, CT 06103

**CENTRAL REEXAMINATION UNIT**

In re Application of	:
Lindsay Roth et al.	: ORDER TO
Application No. 10/799,493	: SHOW CAUSE
Filed: March 12, 2004	:
Practitioner Docket No.: GAO-0001	:

This is a show cause order based on the expiration of U.S. Patent No. 6,355,023, for which patent the present application requests reissue.

**BACKGROUND**

1. Reissue application No. 10/799,493 ("493 reissue application") was filed on March 12, 2004, for reissue of U.S. Patent No. 6,355,023 ("023 patent") issued March 12, 2002.
2. The Image File Wrapper record for the '493 reissue application reveals that a paper titled "Response To Notice To File Missing Parts Of Application" was filed on November 24, 2004, and that the prosecution of the application is not closed.
3. The Office's financial records reveal that the 7.5 year maintenance fee for the '023 patent due by March 12, 2010 (the end of the maintenance fee grace period), was not paid.
4. The '023 patent expired at midnight on March 12, 2010, for failure to pay the 7.5 year maintenance fee due.<sup>1</sup> Notice of the expiration of the '023 patent for failure to pay the 7.5 year maintenance fee was published on May 4, 2010, in the *Official Gazette*.<sup>2</sup>

<sup>1</sup> See: MPEP § 2506, third paragraph.

<sup>2</sup> See: <http://www.uspto.gov/web/offices/com/sol/og/2010/week18/TOC.htm#ref3>.

## ORDER TO SHOW CAUSE

As pointed out above, the '493 reissue application is for reissue of the '023 patent, and the '023 patent has expired for failure to pay the 7.5 year maintenance fee. A notice of the expiration of the '023 patent was published in the *Official Gazette*. Because the '023 patent expired for failure to pay the second maintenance fee, the Director of the USPTO no longer has the authority under 35 U.S.C. § 251 to reissue the '023 patent. See *In re Morgan*, 990 F.2d 1230, 26 USPQ2d 1392 (Fed. Cir. 1993). As stated in *Morgan*,

"The language of section 251 is unambiguous: the Commissioner has authority to reissue a patent only 'for the unexpired part of the term of the original patent.' Thus, **when Morgan's original patent expired on August 19, 1992, the Commissioner was divested of his reissue authority** because there no longer was an unexpired term of the patent for which Morgan's patent could be reissued. Morgan's appeal thus became moot." [990 F.2d at 1231, 26 USPQ2d at 1393; emphasis added]

Because the Director no longer has the authority under 35 U.S.C. § 251 to reissue the '023 patent, the Office intends to terminate the present reissue proceeding, and thereafter hold the '493 reissue application to be an abandoned application.

Applicants are hereby provided with a period of **30 DAYS** from the mailing of this ORDER to show cause why the Office should not terminate the present reissue proceeding.

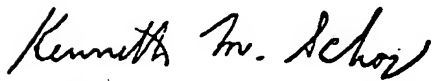
If applicants propose to show cause why the present reissue proceeding should not be terminated, applicants' showing must include an explanation of why the proceeding should continue, in spite of the expiration of the original patent.

If applicants make a showing, the showing will be evaluated as to whether it provides sufficient basis as to why the present reissue proceeding should not be terminated. A failure to respond to this show cause order within the set 30-day period will result in the proceeding being terminated by default. If the present reissue proceeding is terminated, jurisdiction over the present application for reissue of the '023 patent will be returned to Technology Center Art Unit 3763 for processing as an abandoned application.

## CONCLUSION

1. Applicants are hereby provided with a period of 30 DAYS from the mailing of this ORDER to show cause why the Office should not terminate the present reissue proceeding.
2. Failure by applicants to respond to this show cause order within the set 30-day period will result in termination of the present reissue proceeding by default, followed by a mailing of a Notice of Abandonment of the '493 reissue application.

3. Jurisdiction over the '493 reissue application is being retained by the Office of Patent Legal Administration, pending a response by the applicants, or the expiration of time for a response.
4. Telephone inquiries related to this decision should be directed to Raul Tamayo, Legal Advisor, at (571) 272-7728.



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Kenneth M. Schor  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of the Associate Commissioner  
for Patent Examination Policy

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